



State of Maine
Department of Human Services
11 State House Station
Augusta, Maine
04333-0011

John Elias Baldacci
Governor

John R. Nicholas
Commissioner

TO: Interested Parties

FROM: Christine Zukas-Lessard, Acting Director, Bureau of Medical Services

SUBJECT: Proposed Rule: MaineCare Benefits Manual, Chapters II and III, Section 28, Home-Based Services for Children with Mental Retardation or Autism

DATE: June 29, 2004

This letter gives notice of a proposed rule for the MaineCare Benefits Manual (MBM), Chapters II and III, Section 28, Home-Based Services for Children with Mental Retardation or Autism.

This proposed rule creates a new section for Home-Based Services for Children with Mental Retardation or Autism, which were formerly provided under Section 24, Day Habilitation Services. Members under the age of 21 will now receive services under this Section of policy. Members aged 18 to 20 may receive services under Section 24, Day Habilitation Services, so long as the need for such services is addressed in the service plan and does not duplicate services provided under Section 28.

The proposed rules set service plan standards and define timeliness standards for provision of children's services. The Department will reimburse for these services at an hourly rate. These rules also define and set provider requirements for licensing, accreditation, and certification for agencies and their staff.

Interested parties may obtain a full copy of the proposed rule changes from the State of Maine, Bureau of Medical Services web site at www.maine.gov/bms/MaineCareBenefitManualRules.htm

The Department has scheduled a public hearing at 1:30 pm on July 28, 2004, 442 Civic Center Drive, Augusta, Maine. Anyone in need of special accommodations for any scheduled public hearing is asked to contact the Division of Policy and Provider Services no later than July 21, 2004 at 287-9368 or at 1-800-423-4331 (Deaf/Hard of Hearing).

Notice of Agency Rule-making Proposal

AGENCY: Department of Human Services, Bureau of Medical Services

RULE TITLE OR SUBJECT: MaineCare Benefits Manual, Chapters II and III, Section 28, Home-Based Services for Children with Mental Retardation or Autism

PROPOSED RULE NUMBER:

CONCISE SUMMARY: These proposed rules create a new Section for Home-Based Services for Children with Mental Retardation or Autism, which were formerly provided under Section 24, Day Habilitation Services. Members under the age of 21 will now receive services under this Section of policy. Members aged 18 to 20 may receive services under Section 24, Day Habilitation Services, so long as the need for such services is addressed in the service plan and does not duplicate services provided under Section 28.

The proposed rules set service plan standards and define timeliness standards for provision of children's services. The Department will reimburse these services at an hourly rate. These rules also define and set provider requirements for licensing, accreditation, and certification for agencies and their staff. See www.maine.gov/bms/MaineCareBenefitManualRules.htm for rules and related rulemaking documents.

THIS RULE WILL ☐ **WILL NOT** ☒ **HAVE A FISCAL IMPACT ON MUNICIPALITIES.**

STATUTORY AUTHORITY: 22 M.R.S.A., § 42, § 3173

PUBLIC HEARING: Date: July 28, 2004 1:30 PM
Location: Department of Human Services, 442 Civic Center Drive, Augusta, Maine

Any interested party requiring special arrangements to attend the hearing must contact the agency person listed below before July 21, 2004.

DEADLINE FOR COMMENTS: August 8, 2004

AGENCY CONTACT PERSON: Patricia Dushuttle
AGENCY NAME: BMS, Division of Policy and Provider Services
ADDRESS: 11 State House Station
Augusta, Maine 04333-0011

TELEPHONE: 207-287-9362 FAX 207-287-9369
TTY: 1-800-423-4331 or 207-287-1828 (Deaf or Hard of Hearing)

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28.01 DEFINITIONS

- 28.01-1 Applied Behavioral Analysis (ABA) is a specialized service delivery that assists children with autism in the development of significant and necessary life skills. ABA uses procedures that can be empirically validated.
- 28.01-2 Collateral Contact means a face-to-face contact on behalf of the member by a home-based service specialist, mental health professional or other qualified staff member to seek information, or discuss the member's case with other professionals, caregivers, or others included in the service plan in order to achieve continuity of care, coordination of services, and the most appropriate mix of services for the member. Discussions or meetings between staff of the same contracted agency (or their sub contracted agents) are not considered collateral contacts unless such discussions are part of a team meeting including others not employed by the same agency, and are included in the development or review of the treatment plan. MaineCare reimburses for collateral contacts up to ten hours per member per calendar year.
- 28.01-3 Home-Based Services for Children with Mental Retardation or Autism are services delivered in the home or community for persons under the age of 21 with mental retardation and or autism. The goals of these services are to promote developmentally appropriate self-maintenance, physical fitness, self-awareness, self-motivation, and to address sensory, motor and psychological needs.
- 28.01-4 Individual Treatment Plan (ITP) is a written plan describing how the child will be assisted in reaching or maintaining individual goals. The treatment plan must identify only goals that are appropriate to the developmental age of the child and can be measured. The Department's Children's Services staff or designee must approve each treatment plan.
- 28.01-5 Request for Screening Services means a request for a behavioral health screen, a request for assistance in identifying behavioral health needs or a request for a behavioral health service for a child under the age of twenty-one. The request must be made to a DBDS-approved agency that is a participating provider of MaineCare covered case management or in-home behavioral health services to children. The request can be made by a parent or guardian, or a school district or a health care provider with the parent's or guardian's permission.

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28.01 DEFINITIONS (cont.)

- 28.01-6 Service Setting refers to the setting in which members receive services. Members may receive services in the member's home, community, or in a center-based setting, and may be delivered one-on-one, in a group setting, or under an applied behavior analysis model, according to the needs of the member. The member's treatment plan must describe the setting and services to be received by the child.
- 28.01-7 Start Date will be deemed to be the later of: (a) a request for screening services by or on behalf of the child/child's family, or (b) the date upon which financial eligibility under MaineCare is determined which will normally be the date of the letter to the member informing her/him of eligibility provided, however, this date shall in no event be later than forty-five (45) days from the date upon which a completed application for MaineCare is received by DHHS.
- 28.01-8 Timeliness Standards describe the time frames within which the individual treatment plan must be developed and that service must commence. An Individual Treatment Plan will be developed no later than 120 days after the Start Date. Services consistent with the plan will commence generally with an outer limit of 180 days from the Start Date.
- 28.01-9 Treatment Planning Team is the team responsible for developing the treatment plan. The team must include, at a minimum, the service provider, the parent/guardian, and the child (to extent possible). The team may also include the child's case manager, if the child has case management, other service providers and other natural support people.

28.02 ELIGIBILITY FOR SERVICE

To be found eligible for Home-Based Services For Children With Mental Retardation Or Autism, an individual must be under twenty-one years of age and meet the following criteria:

A. General Eligibility Criteria

Individuals must meet the financial eligibility criteria as set forth in the MaineCare Eligibility Manual (MEM). Some members may have restrictions on the type and amount of services for which they are eligible.

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28.02 ELIGIBILITY FOR SERVICE (cont.)

B. Specific Eligibility Criteria

The Department's Children's Services staff or designee must verify that the child is eligible for services in MBM, Chapter II, Section 50, ICF-MR services, and as having a condition or disorder that satisfies the definition of either:

1. Mental retardation, as defined in 34B M.R.S.A. § 5001, or
2. Autism, as that term is defined in 34B M.R.S.A. § 6002.

C. Verification of Eligibility for Home-Based Services for Children with Mental Retardation or Autism

Providers must obtain approval for the treatment plan from the Department of Health and Human Services, Children's Services before starting services. Children's Services will verify eligibility for service level, including amount, frequency, setting, and duration of service. Children's Services will review documentation submitted by the provider including diagnosis, assessment tools, and the ITP.

D. Eligibility for Applied Behavioral Analysis Services

Children eligible for the ABA model of service must have a diagnosis of autism and a current (within 1 year) behavioral assessment. The assessment must show that the child's behaviors: 1) impede the child's ability to function in usual life activities; or 2) present a significant degree of danger to the individual or others.

28.03 DURATION AND INTENSITY OF SERVICES

Eligible MaineCare members are entitled to receive up to the approved number of hours of services under this Section that are medically necessary, described in the treatment plan, and approved by Children's Services staff or its designee. Providers must discharge members from service when the goals identified in the treatment plan have been reached.

28.03-1 Individual Treatment Plans

The ITP must reflect parent involvement in the delivery of treatment to the child. Children's Services staff or its designee must approve the treatment plan before services are reimbursable.

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28.03 DURATION AND INTENSITY OF SERVICES (cont.)

The ITP must be developed within, at the outer limits, 120 days from the Start date. The treatment plan must be reviewed by the child and family team at least every 90 days and either be continued, revised, or closed. Children's Services staff or designee must approve the plan when the ITP is continued beyond 90 days or when the ITP is revised and continued beyond 90 days.

The ITP must address the member's treatment needs in accordance with the policies of services described in this Section and Children's Services staff guidelines and criteria. The ITP must include all of the following:

- A. Diagnosis, diagnostic evaluations(s) and assessments;
- B. Treatment setting;
- C. The amount, frequency and duration of service to be provided and the staffing;
- D. Measurable goals and objectives; a description of the treatment to achieve the goals; the treatment start date; the target date for completion of the goals and objectives; and the staff identified as responsible for meeting the goals and objectives; methods for measuring and documenting progress;
- E. The follow-up dates to monitor progress, and a description of the procedures and instruments used in the evaluation of the child's progress;
- F. A written crisis plan identifying early warning signs of a possible crisis situation, behavioral indicators necessitating crisis intervention, and indication of actions that have been helpful and/or hurtful in the past, and who should be involved in resolving the crisis; and
- G. Dated documentation of service delivery signed by the parent or guardian, child if appropriate, and the home-based services specialist.

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28.04 COVERED SERVICES

A covered service is a face-to-face service provided to an eligible member for which payment may be made under the MaineCare Program, and through contract with Children's Services. Home-based services for children with mental retardation or autism focus primarily upon activities to assist the child with behavior modification or management, physical and social development to promote self-maintenance, self-awareness, self-motivation, and services to address sensory, motor, and psychological needs of children with mental retardation or autism. Approved staff work with children and their families to model behaviors that promote developmentally appropriate skill building, based on an assessment of the child's needs. Services are provided one-on-one with the child unless otherwise approved for a group setting, additional staffing, or ABA model, as approved in the treatment plan. MaineCare covers assessment, treatment planning, and the delivery of treatment.

28.04-1 Services Provided In a Group Setting

Services may be provided in a group setting if the child's treatment plan documents a need for this service. Children's Services must approve group settings. Group setting services must meet all requirements set forth by Children's Services and staffing ratios for services covered under this Section may not exceed four children for one home-based specialist at any time.

28.04-2 Services Provided with an Applied Behavior Analysis Model

Services may be provided with an ABA model to children determined eligible as described in Section 28.02 D. Children's Services must approve provision of ABA services. Children's Services or its designee must approve all changes in the intensity and duration of services provided. The Provider must document the approval of the changes in the treatment plan and the member's record.

28.05 LIMITATIONS

The following limitations apply to reimbursement of services under this Section:

28.05-1 Home-Based Services for Children with Mental Retardation or Autism

MaineCare will limit reimbursement for services under this Section to those covered services documented and approved in the treatment plan that are medically necessary and appropriate

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28.05	<u>LIMITATIONS (cont.)</u>	
	to the child's developmental age. There is no ceiling on services for eligible members receiving services under this Section. Reimbursement is also contingent upon the provider's adherence to any applicable licensing standards and contractual agreements set forth by MaineCare or Children's Services. MaineCare does not cover services usually provided by a parent, such as personal care, custodial care, childcare, or other non-medically necessary services. Respite care, therapy, and crisis intervention are not covered under this Section.	
28.05-2	Collateral contacts	
	Providers may only be reimbursed for ten hours of collateral contacts per member, per calendar year.	
28.05-3	Non-Duplication of Services	
	Only members who are between the ages of 18 and 21 are eligible to receive services concurrently under both this Section and under Section 24, Day Habilitation Services. The member's treatment plan must address the need for these services to occur concurrently, identify clear and measurable goals and objectives and describe how providers will coordinate the services to assure that there is no duplication of services.	
28.06	<u>NON-COVERED SERVICES</u>	
	Non-covered services are described in Chapter I of the MaineCare Benefits Manual (MBM). MaineCare does not cover services that are primarily academic, vocational, social, recreational, or custodial in nature.	
28.07	<u>POLICIES AND PROCEDURES</u>	
28.07-1	Provider Agency Requirements	
	All providers of services under this Section must be enrolled and approved as MaineCare providers by the Bureau of Medical Services (BMS) and Children's Services and must meet all applicable provider requirements of this Section.	
	A. Home-based Services For Children With Mental Retardation Or Autism Provider Contract	

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28.07 POLICIES AND PROCEDURES (cont.)

All providers must have a current contract with Children's Services. The contract must stipulate that the provider will comply with Rider A specifications including: 1) reporting requirements; 2) service specifications and performance guidelines; and 3) treatment objectives.

B. Letter of Approval

Children's Services staff or designee will notify providers in writing when providers are approved under this Section. Children's Services will not approve the provider and send the letter of approval until the provider meets all requirements described in this Section and has met contract requirements.

Providers are not eligible for reimbursement until Children's Services notifies the provider with a letter of approval and a copy has been received by the BMS Provider File Unit.

C. Approval for Provision of Home-Based Services For Children With Mental Retardation Or Autism Services in a Group Setting or Applied Behavior Analysis Model

Providers must submit a request to Children's Services to be approved to provide services to children in a group setting or to deliver ABA services. MaineCare will not reimburse for these services until Children's Services prior authorizes them.

Children's Services will consider all of the following factors in determining whether to approve providers for group settings or ABA services: service description; goals and objectives and expected outcomes; physical setting for the service; transportation plan; staffing patterns; qualifications of staff; supervision and service management; service evaluation and quality assurance measures.

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28.07 POLICIES AND PROCEDURES (cont.)

28.07-2 Qualified Staff

A. Requirements for Providers of Home-Based Services for Children with
Mental Retardation or Autism

1. Certification as Home-Based Service Specialist

Provider agencies must ensure that all direct service staff under this Section are certified or provisionally certified as Home-Based services specialists. Provider agencies must maintain documentation of certification in personnel files. MaineCare will not reimburse providers for services performed by staff without appropriate certification. The Department may recoup reimbursement from providers not appropriately certified.

Home-Based services specialists meet the following minimum requirements:

- a. Be at least 18 years of age;
- b. Have a high school diploma or equivalent; and
- c. Have relevant life experience as determined by the provider agency that must include, but not be limited to, post high school or equivalent education or other specialized training such as paid or volunteer work or care for a family member.

2. Provisional Approval as a Home-Based Services Specialist

Providers may provisionally approve home-based services specialists who meet all of the requirements, but have not yet obtained Children's Services certification. Provisionally approved Home-Based services specialists must schedule the Children's Services required training within 30 days of hire. Home-based services specialists with a Bachelor's degree must obtain certification within 1 year of hire.

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28.07	<u>POLICIES AND PROCEDURES (cont.)</u>	.

Provisionally approved home-based services specialists without a Bachelor's degree must complete training and obtain certification within 6 months of hire.

3. Supervision of Home-Based Services Specialists

Provider agencies must identify qualified professional supervisors for each direct care position. Supervision must include on-site supervision on at least a quarterly basis.

Full-time certified Home-Based services specialists must be supervised a minimum of 4 hours per month. Part-time certified Home-Based services specialists must receive a prorated amount of supervision, with a minimum requirement of one hour per month.

Provisionally approved Home-Based services specialists must be supervised at least 6 hours per month. Part-time provisionally approved Home-Based services specialists must receive prorated supervision with no less than one hour of supervision per month.

4. Professional Qualifications for Supervisors

Supervisors of Home-Based services specialists must meet the following professional qualifications:

- a. Have a Bachelor's degree in a human services or social services field and at least 2 years related experience; or
- b. Have a Master's degree in a human services or social services field and at least 1 year of related experience; or
- c. Be a licensed social worker (LSW) with at least one year of related experience; or
- d. Be a LSW who has attained a related Master's degree; or

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28.07 POLICIES AND PROCEDURES (cont.)

- e. Be a licensed professional counselor (LPC), licensed clinical professional counselor (LCPC), licensed clinical social worker (LCSW), psychologist, physician, or advanced practice registered nurse; or Registered Nurse- Certified; or
- f. Be a registered professional nurse with 3 years related experience.

5. Professional Qualifications of Directors/Clinical Consultants of ABA services

Directors/Clinical Consultants of ABA services must meet the following criteria:

- a. Licensed psychologist with documented experience in design, implementation and evaluation of ABA programming;
- b. Licensed psychologist conditional working under the supervision of a licensed psychologist qualified to consult or direct an ABA program; or
- c. Licensed physician with documented experience in design, implementation and evaluation of ABA.

28.07-3 Timeliness Standards for Children's Services

All providers of services under this Section must meet standards set forth in Children's Services contracts which states the ITP must be developed, at the outer limits, within 120 days of the Start Date, and that services must commence, at the outer limits, within 180 days of the Start Date.

28.07-4 Member's Records

The provider must keep a specific record for each member, which must include:

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28.07 POLICIES AND PROCEDURES (cont.)

- A. Member's name, address, birth date, and MaineCare ID number;
- B. The member's social and medical history, and diagnoses;
- C. The members' assessments, treatment plan and the planning meeting information that identified the member's needs ;
- D. Written, signed, and dated progress notes, kept in the member's records
- E. Children's Services or its designee must approve all changes in the intensity and duration of services provided. The provider must document the approval of the changes in the treatment plan and the member's record.

28.07-5 Surveillance and Utilization Review

The Surveillance and Utilization Review Unit monitors medical services provided and determines the appropriateness and necessity of the services, including duplication of services. See MBM, Chapter I for more detail.

28.08 REIMBURSEMENT

Beginning August 1, 2004, MaineCare will reimburse using an hourly rate for services under this Section, using the maximum allowance in Chapter III, Section 28. The Department of Health and Human Services will reimburse only for the maximum number of billable hours approved. There is no annual dollar ceiling on services for members under the age of 21 years.

28.09 BILLING INSTRUCTIONS

Providers must bill in accordance with MaineCare billing instructions. Group Services, Applied Behavioral Analysis, and Additional Staffing require prior authorization, as detailed in this Section.

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BILLING CODE AS OF 8/1/04	HIPAA-COMPLIANT CODES (TO REPLACE BILLING CODES OF 8/1/04)		UNIT	DESCRIPTIO N	Comment	MAXIMUM ALLOWANCE
	MECMS PROC CODE*	MECMS MODIFIER*				
TB	H2019		15 minute increments (4 units = 1 hr.)	Therapeutic Behavioral Services, per 15 minutes	Individual services	Negotiated Rate up to \$30 per hour
TB2	H2019	HQ	15 minute increments (4 units = 1 hr.)	Therapeutic Behavioral Services, per 15 minutes	Group services (2-4 members group setting) (Requires PA)	\$2.50 per unit (\$10 per hour)
TB3	H2019	AH	15 minute increments (4 units = 1 hr.)	Therapeutic Behavioral Services, per 15 minutes	Applied Behavioral Analysis (Requires PA)	\$ 10 per unit (\$40 per hour)
TB4	H2019	US	15 minute increments (4 units = 1 hr.)	Therapeutic Behavioral Services, per 15 minutes	Individual services, additional staffing	\$11.25 per unit (\$45/hour)
TB4	H2019	UK	15 minute increments (4 units = 1 hour)	Therapeutic Behavioral Services, per 15 minutes	Collateral contacts (Limit of 10 hours/per calendar year)	\$6.25 per unit (\$25/hour)

* Providers will be given 30 days notice to replace 8/1/04 billing codes with HIPAA-compliant codes.